YEARBOOK OF EUROPEAN UNION AND COMPARATIVE LAW-YEUCL
Vol.4, 2025 Article 8

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DOI:10.5281/zenodo.17486500

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Recommended Citation

Meyer, K. (2025). The obligation of interpretation in conformity with Union law by the national judge as an integrative procedural stage in the history of the jurisprudence of the CJEU. *Yearbook of European Union and Comparative Law, vol. 4,* 437-471, Article 8

Available at:
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The obligation of interpretation in conformity with Union law by the national judge as an integrative procedural stage in the history of the jurisprudence of the CJEU

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Abstract: The present work seeks to investigate, based on the jurisprudence of the Court of Justice of the European Union, the role of the national judge, who is obliged to interpret national law according to the rules of Union law. The topic of the disapplication of a domestic regulation in favor of the Union, the preliminary reference and not only, as a way of conformity with Union law, is a reality that has been discussed over the years but also in this work, through the jurisprudence of the Union. The role of national superior courts at European level through preliminary reference and not has played an important role in the formation of EU law at national level, as we will also see in this work. The role of the judge at all levels in national law pays attention to the obligation to interpret Union law by showing, that the binding nature and primacy of Union law, as a value of the Union, is at the forefront of the history of European integration.

Keywords: primacy of Union law; national judge; disapplication of national law; conforming interpretation; Union law; CJEU; legal certainty; standstill obligation; useful effect; horizontal direct effects; direct effectiveness.

Introduction

It always seems very interesting a research on the mandatory need for compliant interpretation, as a control mechanism for the adaptation of national law of the European Union (Niglia, 2022). Perhaps because the adaptation of national law to Union law finds its own precise path within the intervention of the national legislator.

A legislator who first of all carries out the transposition of the directives leaving out the direct effectiveness of its own rules and executing the sentences of the Court of Justice of the European Union (CJEU), as a report of a national, state non-compliance. And also in this way the national rules, that are incompatible with a regulation that enjoys the characteristic of direct applicability, move from the legal system.

The experience up to now has highlighted and translated the adoption of suitable measures, which guarantee the full effectiveness of the Union. In this case the intervention of the legislator appears as a factor that decreases, or rather moderates, not to say that it reaches the limits of a contrast, respecting first

of all the execution of obligations derived from its own treaty. Within this context, the principle of loyal cooperation seeks to inform the Member States and the Union, thus obliging the national constitutional junctions to ensure the primacy of Union law.[1]

The Treaty of Lisbon, to a precise interpretation that operates within the CJEU, reserves to the national judge of Union law[2] an important role to ensure, in an immediate way, the application of this right[3] Thus, the national judge has at his disposal some useful tools to resolve any dispute between the Union law and the national one trying to wait for its removal through the legislative path. A path that disapplies the national law, the preliminary reference, as well as the incident of constitutionality without importance of the obligation of compliant interpretation. In this way

"(...) it imposes on all national bodies (...) to interpret their own internal law in a way as compatible as possible with the requirements of Union law (…)".[4]

1CJEU, Opinion 1/09 (Unified Patent Litigation System) of 8 March 2011, ECLI:EU:C:2011:137, I-01137, par. 68.

2CJEU, Opinion 1/09 (Unified Patent Litigation System) of 8 March 2011, op. cit.

3CJEU, C-103/88, Fratelli Costanzo of 22 June 1989, ECLI:EU:C:1989:256, I-01839, par. 12.

4CJEU, Conclusions of the Advocate General Sánchez-Bordona of 27 November 2018, C-573/17, Popławski II, ECLI:EU:C:2018:957, published in the electronic Reports of the cases, par. 116: "(…) the construction of the area of freedom, security and justice cannot be achieved without the incorrect application of Union law being effectively neutralised by national judges, who, it should be remembered here, play a role in this regard. (…)". 27 February 2018, C-64/16, Associação Sindical dos Juízes Portugueses, ECLI:EU:C:2018:117, published in the electronic Reports of the cases, parr. 32 and 33: "(...) Article 19 TUE (...) the EU confers responsibility for ensuring judicial review within the Union legal order not only on the Court of Justice, but also

The national judge allows the application of a national rule in a way to avoid a conflict with a rule of Union law (Kovar, 2009; Haket, 2015). Such a principle has assumed an essential role over time, which operates and adapts national law to the objectives of the Union legal system within the hypothesis that the national legislation does not ensure the implementation of the Union in a precise way.

In other words, it represents an adaptation technique acquired without constituting delicate principles of handling[5] for judges, who work on the limits to represent a relationship with other remedies, useful to guarantee the primacy of the law.

The stages of development of the compliant interpretation, within the jurisprudence of the CJEU (Niglia, 2022), highlights critical aspects of its application by verifying, how the national supreme courts fulfil the obligation, which is specified by the Union judge.[6]

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on national judges. Therefore, these judges, in collaboration with the Court of Justice, perform a joint function to ensure compliance with the law in the interpretation and application of the Treaties (…)".

5CJEU, 12 February 2019, C-492/18 PPU, TC, ECLI:EU:C:2019:108, published in the electronic Reports of the cases, par. 68. 8 May 2019, C-486/18, Praxair MRC, ECLI:EU:C:2019:379, published in the electronic Reports of the cases, par. 37; 19 September 2019, C-467/18, Rayonna prokuratura Lom, ECLI:EU:C:2019:765, published in the electronic Reports of the cases, par. 60; 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire), ECLI:EU:C:2020:823, published in the electronic Reports of the cases, par. 65.

6CJEU, order of 1st April 2004, Borgmann, C-1/02, ECLI:EU:C:2004:202, I-03219, par. 30; 4 June 2013, C-300/11, ZZ, ECLI:EU:C:2013:363, published in the electronic Reports of the cases, parr. 50-51; 4 September 2014, C-543/12, Zeman, ECLI:EU:C:2014:2143, published in the electronic Reports of the cases, par. 58; 26 February 2002, C-32/00, Commission v. Boehringer, ECLI:EU:C:2002:119, I-01917, par. 53; 24 November 1992, C-286/90, Poulsen and Diva, ECLI:EU:C:1992:453, I-06019, par. 9.

Are there limits to the principles of Union law?

Speaking of the principles of Union law as well as of the compliant interpretation, there is no mechanism that recognizes a text of a conventional nature for them. It is the CJEU that plays a role in

"(...) allowing the national judge to ensure, within the context of his competences, the full effectiveness of the Community rules when he resolves the dispute submitted to him (...)".

The principle of national legal systems is changed by the Union judge by adapting the content and function to the precision of its own legal system, thus attributing a distinctive relevance, which respects and characterizes the use of national constitutions to international law.

This principle constitutes structural effects of a European norm, which implicitly binds the conformity, which connects the national legal system with the primacy of the law of the Union (Chalmers, Davies, Monti, Heyvaert, 2024).

The principle of national legal systems is changed by the judge of the Union by adapting the content and function to the precision of its own legal system, thus attributing a distinctive relevance, which respects and characterizes the use of national constitutions to international law.[7] This principle constitutes

7CJEU, 5 October 2004, joined cases C-397/01 to C-403/01, Pfeiffer, ECLI:EU:C:2004:584, I-08835, par. 114; 9 March 2020, C-103/18 and C-429/18, Sánchez Ruiz and others, ECLI:EU:C:2020:219, not yet published, par. 121; 24 June 2021, C-550/19, Obras y Servicios Públicos and Acciona Agua, ECLI:EU:C:2021:514, published in the electronic Reports of the cases, par. 76; 8 December 2022, C-492/22 PPU, CJ (Décision de remise différée en raison de poursuites pénales), ECLI:EU:C:2022: par. 63: "(…) the term "inherent". The

structural effects of a European norm, which implicitly binds the conformity and connects the national legal system with the primacy of the law of the Union (Chalmers, Davies, Monti, Heyvaert, 2024).[8]

The obligation of the compliant interpretation has been affirmed through the Colson case.[9] The CJEU has highlighted the duty of the national judge to follow, in a compliant manner, an interpretation of the national law with the aim to ensure the implementation of the directives achieving the result established by Art. 288, letter 2 TFEU, transferred from the national legal system (Kellerbauer, Klamert, Tomkin, 2024).[10]

The negative consequences arise from the erroneous, missing

"declaration of relevance" to the nature of the Treaties is a recurring feature of the Court's argumentative path; it has been used (…) the Union judge intended to legitimise his most creative interpretative activity on the need to fill the gaps in the conventional system (…) State liability for damage caused to individuals by violations of Union law attributable to it (...)". See also: joined cases C-6/90 and C-9/90, Francovich and Bonifaci of 19 November 1991, ECLI:EU:C:1991:428, I-05357, parr. 33-35. 14 April 2015, C-76/14, Manea, ECLI:EU:C:2015:216, published in the electronic Reports of the cases, par. 54.

8CJEU, Conclusions of the Advocate General Tizzano of 30 June 2005, C-144/04, Mangold, ECLI:EU:C:2005:420, I-09981, par. 117.

9CJEU, 10 April 1984, 14/83, Von Colson and Kamann v. Land Nordrhein-Westfalen, ECLI:EU:C:1984:153, I-01891. 12 November 1974, 32/74, Haaga, ECLI:EU:C:1974:116, I-01201, par. 6. 20 May 1976, 111/75, Mazzalai, ECLI:EU:C:1976:68, I-00657, par. 10: "(…) effectiveness of the directive, its interpretation, in cases such as the present one, can constitute for the national judge a useful guiding criterion in order to guarantee the interpretation and application of the internal implementing law in a manner consistent with the dictates of Community law (…)".

10CJEU, 20 September 1988, 31/87, Gebroeders Beenrijes, ECLI:EU:C:1988:422, I-04635, par. 39. 23 February 1999, C-63/97, BMW, ECLI:EU:C:82, I-00905, par. 22; C-240/98, C-241/98, C-243/98 to C-244/98, Océano Grupo Editorial and Salvat Editores of 27 June 2000, ECLI:EU:C:2000:346, I-04941, par. 30. 23 October 2003, C-408/01, Adidas-Salomon and Adidas Benelux, ECLI:EU:C:2003:582, I-12537, par. 21. 12 February 2004, C-218/01, Henkel, ECLI:EU:C:2004:88, I-01725, par. 60.

change of the directives.[11] The CJEU recognises the purposes of an interpretation, which responds to the needs of the law of the Union. The jurisprudence of the CJEU has affirmed the obligation, which concerns the source of the law of the Union,[12] the primary norms,[13] the framework decisions[14] and the recommendations in case they are not binding.[15]

Within this context, the scope of application, which has affirmed a wide space, is extended through the judicial and police cooperation pillar of the criminal sector.[16]

The judge of the Union has specified that in this way the ordinary judge ensures "(national) norms preceding or subsequent to the adoption of the Union norm".[17] The compliant interpretation, thus, represents the basis of the principle of the

11 CJEU, C-334/92, Wagner Miret of 16 December 1993, ECLI:EU:C:1993:945, I-06911, par. 20.

12 CJEU, C-91/92, Faccini Dori of July 1994, ECLI:EU:C:1994:22, I-03325, par 26. C-201/02, Wells of 7 January 2004, ECLI:EU:C:2004:12, I-00723, par. 56. Joined cases C-387, 391 and 403/02, Berlusconi of 3 May 2005, ECLI:EU:C:2005:270, I-03565, par. 73.

13 CJEU, 4 February 1988, 157/86, Murphy v. An Bord Telecom Eireann, ECLI:EU:C:1988:62, I-00673, par. 11.11 January 2007, C-208/05, ITC, ECLI:EU:C:2007:16, I-00181, par. 66ss. C-441/14, Dansk Industri (DI), acting on behalf of Ajos A/S v Estate of Karsten Eigil Rasmussen of 19 April 2016, ECLI:EU:C:2016:278, published in the electronic reports of the cases.

14 CJEU, 5 September 2012, C-42/11, Lopes Da Silva Jorge, ECLI:EU:C:2012:517, published in the electronic Reports of the cases, par. 53.

15 CJEU, C-322/88, Grimaldi of 13 December 1989, ECLI:EU:C:1989:646, I-04407, par. 17-18. 11 September 2003, C-207/01, Altair Chimica, ECLI:EU:C:2003:451, I-08875, par. 41.

16 CJEU, C-105/03, Pupino of 16 June 2005, ECLI:EU:C:2005:386, I-05285, parr. 42-43.

17 CJEU, 106/89, Marleasing v. La Comercial Internacional de Alimentación SA of 13 November 1990, ECLI:EU:C.1990:395, I-04135, par. 8.

primacy of the law of the Union. In this way, the judge ensures the means necessary for his power.

The operational nature of the obligation does not oblige in a limitative way the fact, that the national legislation also regulates in a prior way the matter covered by the directive. The examination of national rules, which are introduced for the passage of a directive, requires that the ordinary judge takes and highlights the national law by verifying, how it is applied in a coherent way without contradicting the main objectives.[18]

The CJEU has established the application of the principle, that consolidates the jurisprudential orientation, that is incompatible with the objectives of a norm in the national legal system and with the objectives of the same norm of the Union.[19]

The national judge disapplies the interpretation even if it is accepted by a higher judicial body, which follows the national authorities.[20] The judge is not bound by the existence of

18CJEU, 25 February 1999, C-131/97, Carbonari, ECLI:EU:C:1999:98, I-01103, parr. 49-50. 10 February 2000, C-270/97 and C-271/97, Deutsche Post, ECLI:EU:C:2000:76, I-00929, par. 62. C-456/98, Centrosteel of 13 July 2000, ECLI:EU:C:2000:402, I-06007, parr. 16-17. C-350/03, Shulte of 25 October 2005, ECLI:EU:C:2005:637, I-09215, par. 71. 24 June 2010, C-98/09, Sorge, ECLI:EU:C.2010: par. 53; 12 May 2021, C-844/19, TechnoRent International and others, ECLI:EU:C:2021:378, published in the electronic Reports of the cases, par. 53; 13 October 2022, C-397/21, HUMDA, ECLI:EU:C:2022:790, published in the electronic Reports of the cases, par. 42.

19C-441/14, Dansk Industri (DI), acting on behalf of Ajos A/S v Estate of Karsten Eigil Rasmussen of 19 April 2016, op. cit., par. 33.

20CJEU, 17 April 2018, C-414/16, Egenberger, ECLI:EU:C:2018:257, published in the electronic Reports of the cases, parr. 72 and 73; 6 November 2018, C-684/16, Max-Planck-Gesellschaft zur Förderung der Wissenschaften, ECLI:EU:C:2018:874, published in the electronic Reports of the cases, par. 60.

interpretative elements contrary to the result of the preparatory work of the same national norm.[21]

This principle effectively guarantees the law of the Union, as well as its mandatory nature, justifying an unconditional application. The CJEU places on the national judge the obligation to ensure an interpretation and application of national law as a possible measure, that is in accordance with the rules of the law of the Union (Galmot, Bonichot, 1988)[22] and to "the cases in which this leaves a margin of discretion[23] limiting (its) competences" (Rosas, 2008).[24]

The possibility of protecting the operation of a national norm must, however, capture the norm, that goes beyond the hermeneutic power, that reserves the jurisdictional function through an interpretation, that resolves the dispute with the literal data, an interpretation contra legem.[25] The interpretative

21CJEU, 29 April 2004, C-371/02, Björnekulla, ECLI:EU:C.2004:275, I-05791, par. 13.

22CJEU, 27 October 2009, C-115/08, ČEZ, ECLI:EU:C:2009:660, I-10265, par. 138; 5 October 1994, C-165/91, Van Munster, ECLI:EU:C:1994:359, I-04661, par. 34; 22 September 1998, C-185/97, Coote/Granada Hospitality, ECLI:EU:C:1998:424, I-05199, par. 18; 26 Septemberv 2000, C-262/97, Engelbrecht, ECLI:EU:C:2000:492, I-07321, par. 39; 22 September 2022, C-335/21, Vicente (Action en paiement d'honoraires d'avocat), ECLI:EU:C:2022:720, published in the electronic Reports of the cases, par. 72; 13 April 2010, C-91/08, Wall, ECLI:EU:C:2010:182, I-02815, par. 70; 22 June 2010, C-188/10 and C-189/10, Melki and Abdeli, ECLI:EU:C:2010:363, I-05667, par. 50.

23CJEU, 18 December 2007, C-357/06, Frigerio Luigi C C., ECLI:EU:C:2007:818, I-12311, par. 28.

24CJEU, 10 October 2013, C-306/12, Spedition Welter, ECLI:EU:C:2013:650, published in the electronic Reports of the cases, par. 30.

25CJEU, 15 April 2008, C-268/06, Impact, ECLI:EU:C:2008:223, I-02483, par. 100. joined cases C-378 to 380/07, Angelidaki of 23 April 2009,

operation extends, orients the norm, that is not sufficient to protect the conflict between norms and the judge. In this way, it abandons the path of compliant interpretation and pursues other available remedies.[26]

The failure to comply means for the legislator to interpret and reconcile the irreconcilable[27] given that the interpretative activity moves within the limits and principles of legal certainty and non-retroactivity, that generally refers to the separation of powers and to resolve an activity of a creative character.[28] The prohibition thus assumes the hypothesis of the use of the principle, as an effect that determines, aggravates the criminal liability, which acts in violation of its own provisions[29].

ECLI:EU:C:2009:250, I-03071, par. 199; 16 July 2009, C-12/08, Mono Car Styling, ECLI:EU:C:2009:466, I-06653, par. 61; 15 January 2014, C-176/12, Association de médiation sociale, ECLI:EU:C:2014:2, published in the electronic Reports of the cases, par. 39; 11 November 2015, C-505/14, Klausner Holz Niedersachsen, ECLI:EU:C:2015:742, published in the electronic Reports of the cases, par. 31 and 32; C-294/16, JZ of 28 July 2016, ECLI:EU:C:2016:610, published in the electronic Reports of the cases, par. 33. 8 April 2022, C-44/21, Phoenix Contact, ECLI:EU:C:309, published in the electronic Reports of the cases, par. 50

26CJEU, Conclusions of the Advocate General Maduro of 21 May 2008, C-127/07, Arcelor Atlantique and Lorraine and others, ECLI:EU:C.2008:728, I-09895, par. 15.

27CJEU, C-105/03, Pupino of 16 June 2005, ECLI:EU:C:2005:386, I-05285, parr. 44-47.

28CJEU, 11 June 1987, 14/86, Pretore di Salò, ECLI:EU:C:275, I-02545, par. 20; joined cases: C-74/95 and C-129/95, X, of 12 December 1996, ECLI:EU:C:1996:491, I-06609, par. 24. 26 September 1996, C-68/95, Arcaro, ECLI:EU:C:452, I-06065, par. 37; 28 June 2012, C-7/11, Caronna, ECLI:EU:C:2012:396,published in the electronic Reports of the cases, par. 52. 7 January 2004, C-58/02, Commission v. Spain, ECLI:EU:C:2004:9, I-00621, par. 28; 11 November 2004, C-457/02, Niselli, ECLI:EU:C:2004:707, I-10853, par. 29; 22 November 2005, C-384/02, Grøngaard and Bang, ECLI:EU:C:2005:708, I-09939, par. 30.

29CJEU, C-212/04, Adeneler and others of 4 July 2006, ECLI:EU:C:2006:443, I-06057, par. 115. C-144/04, Mangold of 22 November 2005, ECLI:EU:C:2005:705, I-09981. 30 April 2014, C-475/12, UPC DTH, ECLI:EU:C:2014:285, published in the

What type of measures are "chosen" for the compliant interpretation of the directives?

The compliant interpretation has had a general scope for the order of the Union and in the application, which concerns the directives. It, therefore, has arisen some problems.

A first point concerns the pending implementation of a directive. We recall the Adeneler case, which the CJEU has highlighted. In this case, the national judge interprets the national law in consistent way with the directive "starting from the expiry of the deadline for implementation of the latter".[30] This means an exception for the hypothesis of timely transformation of the relevant obligation, which does not extend to the period preceding the expiry of the deadline but respects Member States' freedom and adopts the implementation act.[31]

Once the Directive enters into force, national judges may "refrain as far as possible from interpreting domestic law in a way which would risk seriously compromising the achievement

electronic Reports of the cases, par. 63. Conclusions of the Advocate General Mazak of 15 February 2007, C-411/05, Palacios de la Villa, ECLI:EU:C:2007:106, I-08531, par. 79-97 and 131-138: "(…) any national measure in a sector which has been the subject of complete harmonisation at Union level must be assessed in relation not to the provisions of primary law, but to those of that harmonisation measure (…)".

30CJEU, Conclusions of the Advocate General Cruz Villalón of 19 March 2015, C-510/13, E.ON Földgáz Trade, ECLI:EU:C:2015:189, 30 April 2014, C-475/12, UPC DTH, ECLI:EU:C:2014:285, published in the electronic Reports of the cases, par. 63. conclusions of the Advocate General Maduro of 18 October 2007, C-306/06, Telecom, ECLI:EU:C:207:614, I-01923, parr. 21-26.

31CJEU, Conclusions of the Advocate General Maduro of 25 January 2007, C-422/05, Commission v. Belgium, ECLI:EU:C:2007:62, I-04749, parr. 46-49.

of the result pursued by this Directive",[32] i.e. as a blocking and/or prohibiting effect of results.[33]

The CJEU asks the ordinary judge to make a difficult distinction between a compliant interpretation and/or an interpretation that does not compromise results for a directive, from a theoretical point of view, which however seems easy to turn out to be complicated from a practical point of view.[34]

The standstill obligation imposes on national judges the risk of a useful effect (Liakopoulos, 2020a; Liakopoulos, 2020b) of the directives, which it intends to pursue at the time and is transposed and translated as a hypothesis of a soft declination of an obligation of compliant interpretation. The CJEU has indicated that the national judge follows the path, which takes into consideration, the national provisions, having as their object the implementation of a directive that

"(...) starting from the date of entry into force of said directive, the pre-existing national provisions suitable to ensure the conformity of national law

32CJEU, Conclusions of the Advocate General Mancini of 7 October 1986, 30/85, Teuling v Bedrijfsve-reniging voor de Chemische Industrie, ECLI:EU:C:1986:367, I-02497, par. 7.

33CJEU, 8 May 2003, C-14/02, ATRAL, ECLI:EU:C:2003:265, I-04431, par. 58: "(…) to "refrain from adopting provisions which may seriously compromise the achievement of the purpose prescribed by the directive itself (…)". 10 November 2005, C-316/04, Milieufederatie, ECLI:EU:C:2005:678, I-09759, par. 42; 26 May 2011, from C-165/09 to C-167/09, Stichting Natuur en Milieu and others, ECLI:EU:C:348, I-04599, par. 78; 11 September 2012, C-43/10, Nomarchiaki Aftodioikisi Aitoloakarnanias and others, ECLI:EU:C:2012:560, published in the electronic Reports of the cases, par. 57.

34CJEU, joined cases C-261/07 and 299/07, VTB-VAB of 23 April 2009: ECLI:EU:C:2009:244, I-02949, par. 35. 7 September 2006, C-81/05, Cordero Alonso, ECLI:EU:C:2006:529, I-07569, par. 29.

with the latter (…)".[35]

The national judge does not prejudice the objectives of an act through a hermeneutic operation of a normative context, which insists on ensuring implementation and compliance indirectly. The Advocate General has argued over the years, that the prohibition of certain results excludes the possibility for individuals to anticipate direct effects of the directive, which saves the obligation of a compliant interpretation, that falls to the common judge upon its entry into force (Seidel, 2023).[36]

The relative prohibition is not the only one, which conflicts with the jurisprudence of the CJEU. Problems arise from the use of conforming interpretation, which circumvents the prohibition of prejudice and the horizontal direct effects (Bobek, 2020). In such a case, the directive is not correct, fully implemented by a Member State and individuals, asserting equally their own rules within the national judge and in conditions, which create direct

35 CJEU, C-81/05, Cordero Alonso of 7 September 2006, ECLI:EU:C:2006:621, I-07569. Conclusions of the Advocate General Darmon of 14 November 1989, C-177/88 to C-179/88, Dekker and others, ECLI:EU:C:1989:424, I-03941, par. 11; 29 May 1991, from C-87/90 to C-89/90, Verholen and others, ECLI:EU:C:1991:314, I-03757, par. 15; 18 May 2004, C-313/02, Wippel, ECLI:EU:C:2004:607, I-09483, parr. 58-63. conclusions of the Advocate General Sharpston of 23 January 2013, from C-457/11 to C-460/11, VG Wort and others, ECLI:EU:C:2013:34, published in the electronic Reports of the cases, par. 127.

36 CJEU, C-33/70, SACE of 17 December 1970, ECLI:EU:C:1970:118, I-01213. C-41/74, Van Duyn of 4 December 1974, ECLI:EU:C:1974:133, I-01337; 1st Jul.y 2010, C-194/08, Gassmayr, ECLI:EU:C:2010:386, I-06281, par. 45: "(…) a provision of Union law is unconditional if it establishes an obligation which is not subject to any condition or subordinated, as regards its observance or its effects, to the adoption of any act by the institutions of the Community or the Member States (…) precise enough to be able to be invoked by an individual and applied by the judge when it establishes an obligation in unequivocal terms (...)".

effect in a precise and unconditioned way.[37]

The CJEU affirms the production of effects of a rule, which is valid by a private individual against a state. So we talk about vertical direct effects leaving out the possibility, that requires the application of a rule to a dispute between private individuals, i.e. horizontal direct effects. The reasoning seems to be precise and known (Bobek, 2020).

The admission of effects, which protect the individual harmed by a state breach, conflicts with the state, which does not grant rules of a directive, implements inverse vertical effects in relation to the individual (De Mol, 2010).[38]

The counterpart, responds to the force of the national law, as well as to the profiles of illegitimacy, which respect the law of the Union. It is highlighted, that the profiles of substantial discrimination as well as the failure to recognize horizontal direct effects, are able to raise (Craig, 1997; Timmermans, 1997; Dashwood, 2007) the directives on employment matters, which

37CJEU, C-148/78, Ratti of 5 April 1979, ECLI:EU:C:1979:110, I-01629, par. 22. C-8/81, Becker of 19 January 1982, ECLI:EU:C:1982:7, I-00053, parr. 24-26. C-152/84, Marshall v. Southampton and South-West Hampshire Area Health Authority of 26 February 1986, ECLI:EU:C:1986:84, I-00723, par. 47.

38CJEU, 7 March 1996, C-192/94, El Corte Inglés, ECLI:EU:C:1996:88, I-01281, par. 15; 14 September 2000, C-343/98, Collino and Chiappero, ECLI:EU:C:2000:441, I-06659, par. 20 and 21; order of 24 October 2002, C-233/01, RAS, ECLI:EU:C:2002:621, I-09411, par. 19; 19 January 2010, C-555/07, Kücükdeveci, ECLI:EU:C:2010:21, I-00365, par. 6; 10 October 2017, C-413/15, Farrell, ECLI:EU:C:2017:745, published in the electronic Reports of the cases, par. 31; 8 October 2020, C-568/19, Subdelegación del Gobierno en Toledo (Conséquences de l'arrêt Zaizoune), ECLI:EU:C:807, published in the electronic Reports of the cases, par. 35.

are valid and depend on the state which is the employer and the defaulting party.

In cases where private employees have a private individual as their employer, the latter does not bear responsibility for the failure to transpose a directive and the fundamental act is addressed only to the Member States (Chalmers, Davies, Monti, Heyvaert, 2024).

The application of a compliant interpretation does not replace the consequences and the direct effects of an act (Liakopoulos, 2019). The CJEU believes that this circumvents the prohibition of horizontal effects. In fact, a judge interprets the national legislation in a way compliant with the text of a directive and as a consequence the provisions are applied.[39]

The related principle becomes a point of extension of the production of direct effects in disputes between private individuals[40] and the coverage of a fast direct effectiveness, is

39CJEU, conclusions of the Advocate General Sharpston of 14 November 2013, C-351/12, OSA, ECLI:EU:C:2013:749, published in the electronic Reports of the cases, par. 44. conclusions of the Advocate General Stix-Hackl of 27 October 2005, C-131/04 and C-257/04, Robinson-Steel and others, ECLI:EU:C:2005:660, I-02531, par. 44: "(…) disputes between private individuals (…) the principle of interpretation of national law in conformity with Community law constitutes an indispensable principle to ensure the full effectiveness of Community rules (…) compliant interpretation has often been used in application practice as an expedient to overcome this structural obstacle to the production of direct vertical and horizontal effects (…) non-opposability to individuals of rules contained in directives which have not been implemented or have not been correctly executed (…)".

40CJEU, Conclusions of the Advocate General Cruz Villalón of 18 July 2013, C-176/12, Association de médiation sociale, ECLI:EU:C:2013:451, published in the electronic Reports of the cases, par. 79: "(...) it is undeniable that in the case of a dispute between private individuals, even if the judge limits himself to invalidating or disapplying an illegitimate act, there will always be a party on whom an obligation

highlighted.[41]

The formal path of the CJEU is based on the necessity, which protects equal treatment within the application of Union law and ensures the supremacy of this law (Liakopoulos, 2019). The application of the conform interpretation within the scope of a cross-border dispute allows the citizen of a Member State, as well as the directive, that is correct to enforce the rules within and against a citizen of another Member State, that its transposition is not finalized.

The use of conforming interpretation creates a high cost in terms of legal certainty, as well as sacrifies the trust, that private individuals place in existing laws, which concern the rights recognized to the obligations imposed. These are obligations without conforming interpretation. The pendency of a transposition does not bring effects, that are valid towards the Member States and by means of an adequate proportionate way (Woods, Watson, Costa, 2017).[42]

The criticality, that has arisen for the CJEU about the compliant interpretation of a national provision ensures that a

"(...) Member State has not adopted the legislative measures necessary to

will be imposed that he did not initially think he would have to assume (...)".

41 CJEU, 17 September 2014, C-441/12, Almer Beheer and Daedalus Holding, ECLI:EU:C.2014:2226, published in the electronic Reports of the cases, par. 47; C-356/12, Glatzel of 22 May 2014, ECLI:EU:C:2014:350, published in the electronic Reports of the cases, par. 43; 19 October 1977, 117/76 and 16/77, Ruckdeschel and others, ECLI:EU:C:1977:160, I-01753, par. 7.

42 According to Woods, Watson, Costa: "(…) indirect effect has always been a doctrine of uncertain effect (...)".

(implement) fully (the Union provision) (...) (it) interprets provisions of domestic law in a way deemed compliant with the precepts of a directive that cannot present the clarity and precision required to guarantee the need for legal certainty (…)".[43]

The issue highlights an old problem, which places the process of European integration as well as the construction of a direct effectiveness of the directives, as elements of an incoherence of a legal system of the Union. Thus, they earn the names of an original flaw[44] as well as perhaps of an infant disease of the Union.[45]

Disapplication, constitutional legitimacy and damages action as adaptation remedies

The compliant interpretation represents an opportunity for the national judge to protect the national norm, which is consistent with the objective of the Union. An exception is made for the hypothesis, that it has the quality of an act of the Union that gives direct application to the compliant interpretation,

43CJEU, 27 October 1993, C-338/91, Steenhorst-Neerings, ECLI:EU:C:1993:857, I-05475, par. 32; 2 December 1986, 239/85, Commission v. Belgium, ECLI:EU:C:1986:457, I-03646, par. 7.

44CJEU, 10 May 2001, C-144/99, Commissionv. The Netherlands, ECLI:EU:C:2001:257, I-03541, par. 21; 4 April 1974, 167/73, Commission v. France, ECLI:EU:C:1974:35, I-00359, par. 41; 25 October 1979, 159/78, Commission v. Italy, ECLI:EU:C:1979:243, I-03247, par. 22; 2 March 1988, 104/86, Commission v. Italy, ECLI:EU:C:1988:181, I-01799, par. 12; 15 October 1986, 168/85, Commission v. Italy, ECLI:EU:C:1986:208, I-2029, par. 11: "(…) maintaining unchanged, in the legislation of a Member State, a measure which is incompatible with a provision of the Treaty, even if directly applicable in the legal systems of the Member States, creates an ambiguous factual situation in that it keeps the interested parties in a state of uncertainty as to the possibility of appealing to Community law (...)".

45CJEU, C-282/10, Dominguez of 24 January 2012, ECLI:EU:C:2012:33, published in the electronic Reports of the cases, par. 23.

constituting not only the immediate remedy but also in an effective way the national system, that provides and guarantees the primacy of the law of the Union. In a not so invasive way the national competences allow the CJEU to a national provision, that is contrary to the law of the Union to disapply "any compliant interpretation of such provision".[46]

The principle, thus, allows the national judge not to follow his own salvation from a national superior court, obtaining, in such a way, the elimination of a norm from the entire system that is in conflict with interposed norms, especially constitutional ones. The national judge finds himself applying the regulation of direct applicability, which is endowed with the effect of standardizing national regulations thus ensuring[47] and proceeding directly to the non-application of a national norm of the Union[48].

The possibility of interpreting national law in accordance with the text of a regulation are exceptional and rare occasions. In

46CJEU, C-106/77, Administration of Finance v. Simmenthal of 9 March 1978, ECLI:EU:C:1978:49, I-00629, par. 14: "(…) direct applicability must be understood in the sense that the provisions of Community law must exert their full effects in a uniform manner in all Member States (…)".

47CJEU, C-106/77, Administration of Finance v. Simmenthal of 9 March 1978, op. cit., par. 27: "(…) provisions of the Treaty and acts of the institutions, where they are directly applicable, have the effect, in their relations with the domestic law of the Member States (…) of rendering "ipso jure" inapplicable, by the very fact of their entry into force, any conflicting provision of pre-existing national legislation (…)".

48CJEU, 7 January 2004, C-60/02, X (Rolex), ECLI:EU:C:2004:10, I-00651, parr. 59-61.11 January 2001, C-403/98, Monte Arcosu, ECLI:EU:C:2001:6, I-00103, parr. 26-29. 14 April 2011, C-42/10, C-45/10 and C-57/10,Vlaamse Dierenartsenvereniging and Janssens, ECLI:EU:C:2011:517, published in the electronic Reports of the cases, parr. 48-50.

this case, the provisions are not endowed with direct effectiveness and require national measures, which are in execution (Bouhier, 2012).[49]

The national judge has been called upon to apply the provisions of a directive in the absence of a correct act which, through the succession of useful remedies, guarantees the effectiveness of a Union law, which follows a precise order[50] and is based on a compliance with the principle of proportionality, as a pursuit of legitimate objectives. In this case, the Union law achieves and does not exceed the limits for its achievement (Liakopoulos, 2019).[51] It is possible that

"(…) choosing between several appropriate measures, the least restrictive must be used (…). The inconveniences caused must not be disproportionate to the aims pursued (…)".[52]

49CJEU, 24 May 2012, C-97/11, Amia, ECLI:EU:C:2012:306, published in the electronic Reports of the cases, par. 27 ss.

50CJEU, 3 December 2019, C-482/17, Czech Republic v. Parliament and Council, ECLI:EU:C:2019:1035, published in the electronic Reports of the cases, par. 76; 25 March 2021, C-517/19 P and C-518/19 P, Alvarez y Bejarano and others v. Commission, ECLI:EU:C:2021:240, published in the electronic Reports of the cases, par. 84ss. 29 January 2008, C-275/06, Promusicae, ECLI:EU:C:2008:54, I-00271, par. 68: "(…) authorities and judges of the Member States must not only interpret their national law in conformity with the said directives, but also ensure that they do not rely on an interpretation of them which conflicts with the above mentioned fundamental rights or with other general principles of Community law, such as, for example, the principle of proportionality (…)".

51CJEU, 13 March 2019, C-128/17, Poland v. Parliament and Council, ECLI:EU:C:2019:194, published in the electronic Reports of the cases, par. 94; 4 May 2016, C-358/14, Poland v. Parliament and Council, ECLI:EU:C.2016:323, published in the electronic Reports of the cases, par. 78; 6 September 2017, C-643/15 and C-647/15, Slovakia and Hungary v. Council, ECLI:EU:C:2017:631, published in the electronic Reports of the cases, par. 206.

52CJEU, C-212/04, Adeneler and others of 4 July 2006, op. cit., par. 113: "(...) of compliant interpretation] has been imposed in particular in the case of lack of direct effectiveness of a provision of a directive (...) precise and unconditional to exert such effectiveness, whether it is a dispute exclusively between individuals (...)". 8

This is the principle of substitutability. The interpretation of national law in a compliant way with the directive constitutes a remedy, which calls upon the national judge to apply a guarantee the primacy of Union law in the event, that the law contains a directive, which does not cause direct effects (Simon, 2013). In this way, it is ensured, that the national legal system continues to apply a national provision, avoiding the destruction of the judge, who has required to effectively place a provision incompatible with Union law[53] alongside its own national legal system until the time of its repeal.[54]

Conforming interpretation cannot be possible if the judge is indispensable and proceeds with other tools, that provide and ensure the application of Union law. It should be noted that this interpretative activity for the judge is characterized, as not equivalent to the availability that distorts and creates chaos.[55] The obligation of a conforming interpretation does not continue otherwise

November 2016, C-554/14, Ognyanov, ECLI:EU:C:2016:835, published in the electronic Reports of the cases, parr. 58 and 61.

53CJEU, Conclusions of the Advocate General Bobek of 17 March 2016, C-187/15, Pöpperl, ECLI:EU:C:2016:550, published in the electronic Reports of the cases, par. 62: "(...) national law which is not compatible with Union law must be interpreted in accordance with the latter. Where this proves impossible, the national legislation must be disapplied (...) an interpretation in accordance with Union law would be more advisable, since it minimises the impact on the national legal system, provided that it still manages to ensure, by way of interpretation, a solution compatible with Union law (…)".

54CJEU, 11 October 2007, C-241/06, Lämmerzahl, ECLI:EU:C:2007:597, I-08415, parr. 62 and 63.

55CJEU, 8 November 2016, C-554/14, Ognyanov, op. cit., par. 66.

"(...) when national law cannot receive an application that leads to a result compatible with that pursued by the Union law (...)" (Barav, 2017; Craig, 2018).[56]

It is verified that the law in question is precise, unconditional and disapplies the national law in dispute.[57] The Union law does not invoke a single visa, that lacks a requirement of direct effectiveness. In this case, the judge turns to the Constitutional Court to request the verification of compatibility of a national law according to the rules of each national constitutional law.[58]

The ordinary judge does not take into consideration the preliminary intervention of the CJEU when a doubt is expressed between the effective possibility, that interprets a national rule in a way consistent with the directive and in such a way proceeding directly with its disapplication. For the administrative, national judicial authorities

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56CJEU, 21 May 1987, 249/85, Albako/BALM, ECLI:EU:C:1987:245, I-02345, par. 13ss. 5 March 1998, C-347/96, Solred, ECLI:EU:C:1998:87, I-00937, par. 30; C-327/00 of 27 February 2003, ECLI:EU:C:2003:109, I-01877. C-125/01, Pflücke of 18 September 2003, ECLI:EU:C:2003:477, I-09375, par. 48: "(...) the national judge must disapply the national provision (...) if he finds that it does not comply with the rules of Community law and, moreover, that no compliant interpretation of the provision itself is impossible (...) the national judge (...) has the obligation to ensure the full effectiveness of such rules (...) any conflicting provision of national legislation (...) without having to request or await its prior removal by legislative means or by any other constitutional procedure (...)".

57CJEU, Conclusions of the Advocate General of 24 June 2019, C-573/17, Popławski II, ECLI:EU:C:2019:539, published in the electronic Reports of the cases, par. 60: "(…) disapplying internal practice which conflicts with the Framework Decision, even if the latter cannot be considered a self-executing act (…) the principle of the primacy of Union law cannot (…) lead to calling into question the essential distinction between provisions of Union law which have direct effect and those which do not (…)".

58CJEU, 9 November 2006, C-346/05, Chateigneir, ECLI:EU:C:2006:711, I-10951, par. 22. 1st February 2001, C-108/96, Mac Quen and others, ECLI:EU:C:2001:67, I-00837, par. 18.

"(...) the interpretation provided by the Court following the referral could convince the internal judge to reconsider the doubts expressed with regard to the limits of its interpretative action (...) the distance, insurmountable by way of interpretation, between the text of the internal rule and that of the provisions of the directive (...)" (Weber, 2024).[59]

The conflicts with the guarantees, concerning legal certainty and the interpretative judgment of the CJEU, orient the national judge towards a national norm, which is in conformity with the Union law (Hilson, Downes, 1999; Betlem, Nollkaemper, 2003; Klamert, 2006).[60]

The result prescribed by the directive does not achieve the compliant interpretation, asking the national judge for the relative compensation for damages, that respects the conditions established through the Francovich case[61].

The obligation to compensate individuals falls to the Member States and to the capacity of a rule of Union law, that produces direct effects[62] and as a consequence the eventuality of a national rule, that is in dispute with the intervention of the

59CJEU, 14 July 1988, C-298/87, Smanor, ECLI:EU:C:1988:416, I-04489. C-506/04, Yara Suomi, ECLI:EU:C:2016:587, I-08613.

60CJEU, Conclusions of the Advocate General Saggio of 16 December 1999, C-240/98, C-241/98, C-243/98 to C-244/98 Océano Grupo Editorial and Salvat Editores, ECLI:EU:C:1999:620, I-04941.

61CJEU, Conclusions of the Advocate General Saggio of 16 December 1999, C-240/98, C-241/98, C-243/98 to C-244/98 Océano Grupo Editorial and Salvat Editores, op. cit., par. 40: "(…) conditions are that the result prescribed by the directive involves the attribution of rights to individuals. The second condition is that the content of such rights can be identified on the basis of the provisions of the directive. Finally, the third condition is the existence of a causal link between the breach of the obligation on the part of the State and the damage suffered by the injured parties (…)".

62CJEU, C-46/ and 48/93, Brasseire du pêcher of 5 March 1996, ECLI:EU:C:1996:79, I-01029, par. 20.

constitutional judge effectively guarantees the recognition of rights based on Union legislation.

Conforming interpretation and the jurisprudence of the national superior courts

Conforming interpretation and the adaptation of national law to the law of the Union finds ample space in the jurisprudence of each constitutional court of the State Member of the Union. In this way, we have the recognition of the principle of conforming interpretation, which concerns the function of adapting the internal legal system to the law of the Union.

The immediate effectiveness of the law of the Union is shown, as well as the premise for two legal systems, which are coordinated and communicated in a reciprocal and autonomous way. Conforming interpretation plays a role for the adaptation instruments, which are entrusted to the common judge.

The admissibility of the judge's proposal appears as a prerequisite for a compliant interpretation proposed by a private party in a plausible way, which thus results in excluding the conflict with ordinary hermeneutic instruments, permitted by the own legal system.

The compliant interpretation by the ordinary judge does not justify the maintenance of effects of a rule incompatible with the law of the Union within a national legal system. The

Constitutional Court is ready for an interpretation, that is not in conflict with binding rules of the Union and the preferred internal legal system, avoiding thus that the national state is in compliance with the binding obligations of the Union.

The antinomy in interpretative way does not fear the legislator to repeal the illegitimate rule with a definitive way since the presence of a national law continues to create a state of ambiguity, uncertainty for the rules of law, with an effective and applied way, in this regard.

The possible doubts of a national judge, which are inherent with the possibility of interpreting the national norm in a manner compliant with the law of the Union, do not resolve the immediate intervention. It is reiterated, in this regard, that the question of European compatibility constitutes a logical, legal process, that respects the constitutionality, the national law because it invests its applicability to the relevance of a question.[63]

The possible clarifications of the judge a quo consider as useful the interpretative activity, that asks the CJEU, a prejudicial mechanism of inadmissibility relating to the question of

63See, Declaración 1/2004 of 13 December 2004 of the Tribunal Constitucional. The sentence of 11 May 2005 of constitutional court of Poland (Trybunał Konstytucyjny), K 18/04; the sentence of Austrian Constitutional Court of 14 March 2012 (Verfassungsgerichtshof), U 466/11-18 and U 1836/11-13); of 27 July 2006, n. 2006/540 DC and of 15 October 2021, n. 2021/940 QPC, of the Conseil constitutionnel: "(…) la transposition d'une directive ou l'adap- tation du droit interne à un règlement ne sauraient aller à l'encontre d'une règle ou d'un principe inhérent à l'identité constitutionnelle de la France, sauf à ce que le constituant y ait consenti (…)".

legitimacy. The superior court recognizes the compliant interpretation without other obligations of reservations. The limits of operation do not concern the eventuality of an open conflict with the letter of provision, that is contra legem as well as its own application as effects in malam partem for the criminal liability of the individual.

The disapplication is also prohibited if it has to do with the limits and the respect of the fundamental principles of a constitutional order of the inalienable rights of the person. It is an eventuality, which applies the norm of the Union through the compliant interpretation, which puts in contrast the harsh constitutional principles, as a result that respects and represents the competent norm that governs the case.

Conforming interpretation also guarantees internal constitutional norms, that originate from and respect the law of the Union. However, it is necessary to activate counter-limits, that the national judge is bound to respect. Therefore, national judges ensure the application of the law of the Union in an appropriate manner by ensuring the primacy of the law.[64] It thus emerges, that the CJEU can be called upon to affirm the effectiveness of

64CJEU, C-11/70, Handelsgesellschaft of 17 December 1970, ECLI:EU:C:1970:114, I-01125, par. 3. 26 February 2013, C-399/11, Melloni, ECLI:EU:C:2013:107, published in the electronic Reports of the cases, par.59; 18 May 2021, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociația "Forumul Judecătorilor Din România" and others, ECLI:EU:C:2021:747, not other information. Order of 6 October 2021, C-204/21 R-RAP, Commission v. Poland () and vie privée des juges), ECLI:EU:C:2021:834, published in the electronic Reports of the cases, par. 24.

the law in its national, European territory.

National conforming interpretation is not the same as that of the Union. Logic avoids that the meaning of supreme norms of a national legal system has as its objective to ensure a necessary, external normative source. This is a sure foundation of a relationship in force. It is also a parameter without meaning and consequences between the fundamental principles of the Union exercised in certain matters within the limits of the principle of attribution.

The CJEU has repeatedly reiterated, that the principle of procedural autonomy and the procedural nature of jurisdictional remedies within its own legal system, in an extraordinary manner, allow the obligation of referral prescribed by Art. 267, letter 3 TFEU (Kellerbauer, Klamert, Tomkin, 2024), as a recognition of Union law. Thus, the interpretation of national law in accordance with Union law presents itself, as a patrimonial acquisition of a jurisprudence from the court, which in a generic way leads to results of an interpretative nature, privileging the meaning in accordance with Union law and the interpretation provided by the CJEU.

The case of compliant interpretation does not seem very convincing, when reading the Pupino case, which recognizes the compliant interpretation as an extension of the criminal liability of individuals and not as an application of legitimate suspicions,

that concerns the production of effects in malam partem for the accused.

The CJEU brings the obligation of compliant interpretation, which recognizes the directive as capable of producing legal effects in a precise way and with legal relevance. It also respects the direct effect of an obligation of compliant interpretation in a substantial way within the duty to abstain from the different interpretation prejudicial to the results, that the directive follows.

In cases of ambiguity of its own law, the national judge makes use of the compliant interpretation, which it elaborates for the judges of the Member States, i.e. the implementing rules of a directive, thus pushing and obliging the application of an interpretation of its own legal system as well as justifying the limits of the national rule. This is a use, that improperly and excessively represents the evident application, as an object of conformity to Union law, to the law of the system, which belongs to the judge, thus excluding the obligation, which is an object of law as a product of another Member State.

The obligation of the CJEU marks the discontinuity of a correct application of the principle of jurisprudence, thus highlighting the application of the interpretation in accordance with national procedural rules. In this regard, the substantive norms are variously attested to the systems of the Member States.

Conclusions

From the previous paragraphs we have understood that the lack of application of the use of conforming interpretation does not show insufficient knowledge of the dynamics of a legal system of the Union, which is aware many times of an erroneous interpretation.

The effort is to construct and resolve, with a limiting way, individual cases, which are extended to extremes, thus justifying the application of the principle, that responds to the rules of the CJEU. The conforming interpretation is not a choice that suits the discretion of the common judge. It, however, imposes limits on the basis of the functional hierarchy relationship to the national system and to the Union.

An adequate interpretation is an expression of the duty of conformity, that imposes the primacy of the law of the Union without forgetting and at the same time guaranteeing every national constitution.

In the Popławski II case, the CJEU recognized the link between the primacy of law and direct effectiveness, as a consequence of the effects, that are connected with its application (Miasik, Szwarc, 2021).[65] The effects linked to the disapplication are

65CJEU, 4 March 2020, C-183/18, Bank BGŻ BNP Paribas, ECLI:EU:C:2020:163, published in the electronic Reports of the cases. 20 April 2023, C-348/22, Competition and Market Authority (Municipality of Ginosa), ECLI:EU:C:2023:301, published in the electronic Reports of the cases, "(…) the effect of mere exclusion must be regarded as merely optional for the national judge and not as automatic and obligatory, but provided that the merely obstructive disapplication or exclusion effect does not compromise the primary need to safeguard

considered distinct from products of the norm, creating direct effects (Figueroa Regueiro, 2002; Lenaerts, Corthaut, 2006).[66]

The disapplication of a national norm in contrast with the application of a norm of the Union, that is devoid of direct effects, follows its own normative vacuum. An approach of exclusion hypotheses capable of offering effective protection to individuals should be taken into consideration.

The disapplication has the opposite, suspensive effect on state action. The non-application of an illegitimate national norm follows the ex novo expansion of a different national norm, which the judge is able to interpret in a way consistent with the norm of the Union, that is devoid of direct effect.

The recognition of a distinction between the exclusion and substitution effect allows the national judge to make use of the conforming interpretation, when the illegitimate national rule is immediately disapplied even if the Union rule is not self-executing. It ensures compliance with the internal legal system and with a set of national rules, which make use of the conforming interpretation, which prevents the disapplied rule.

The disapplication causes the exclusion effect and does not make the conforming interpretation of national law an activity contra legem, that removes the internal obstacle, which includes

legal certainty, a fundamental and essential principle also in the legal system of the European Union (…)".

66 CJEU, C-287/98, Linster of 19 September 2000, ECLI:EU:C:2000:468, I-06917, par. 57.

the judge using other national rules, present in the legal system and compatible with Union law.

In sum, the compliant interpretation is present, as a supplementary remedy for a disapplication, which allows the individual not to be in circumstances without protection, that is, as an action for extra-contractual liability and against the state, which is not able to attest itself, as a valid alternative remedy.

The action for damages, thus, constitutes a natural, subsidiary remedy for an individual, which manifests[67] the relative non-fulfilments for the Member States that are often and too easily justified, allowing individuals to be adequately compensated, precluded from any form of real protection.[68]

67 Conclusions of the Advocate General Tesauro of 28 November 1995, C-46/93 and C-48/93, Brasserie du Pecheur and Factortame, ECLI:EU:C:1995:407, I-01029, par. 104.

68 CJEU, Conclusions of the Advocate General Hogan of 9 September 2021, C-497/20, Randstad Italy, ECLI:EU:C:2021:725, published in the electronic Reports of the cases, par. 80.

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